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Memorandum

To: Chair, Vice Chair, and Commissioners
California Energy Commission

From: Aleecia Gutierrez, Director
Energy Assessments Division
California Energy Commission

Date: May 19, 2023

Subject: CEC Staff Recommendation on Petition for Formal Rulemaking Regarding Implementation of SB X1-2 and SB 1322

I. Summary

On May 11, 2023, Western States Petroleum Association (WSPA or Petitioner) filed a petition requesting that the California Energy Commission (CEC) initiate a formal rulemaking to implement SB X1-2 and SB 1322. Petitioner's assertions that terms of these laws require clarification are premature as SB X1-2 has yet to take effect. There is no impediment for regulated entities to comply with the laws by the specified deadlines. Furthermore, the CEC is already considering whether to open a rulemaking on this topic and what the scope of a potential future rulemaking would be. For the reasons provided herein, CEC staff recommends the CEC deny the Petition as premature and consider opening a rulemaking after SB X1-2 takes effect and it is determined that procedures, guidelines, or regulations are needed.

II. Procedural and Factual Background

On September 16, 2022, Governor Newsom signed SB 1322 (Stats. 2022, ch. 374), an act to amend sections 25362 and 25364 of, and to add Section 25355 to, Chapter 4.5, Division 15 of the Public Resources Code (PRC). SB 1322 took effect on January 1, 2023. On March 28, 2023, the Governor approved SB X1-2 (Stats. 2023, 1st Ex. Sess. 2023, ch. 1), an act to amend Sections 25354, 25355, 25362, and 25364 of, to add Sections 25354.2, 25355.5, 25355.7, and 25367 to, and to add Chapter 4.6, to Division 15 of, the PRC. SB X1-2 will take effect on June 26, 2023. SB 1322 and SB X1-2 build upon the existing reporting framework of the Petroleum Industry Information Reporting Act (PIIRA) of 1980. SB 1322 added requirements to report additional data including costs, prices, and fees. SB X1-2 revised existing data reporting requirements, added new data reporting requirements, and established new enforcement mechanisms, among other changes.

On May 11, 2023, Petitioner filed with the CEC's Executive Director a petition to initiate a formal rulemaking (Petition) pursuant to California Code of Regulations (CCR), title 20, section 1221. The Petition seeks to clarify terms and processes related to implementation of SB 1322 and SB X1-2. On May 18, 2023, the Executive Director certified the Petition as complete pursuant to CCR, title 20, section 1221. The CEC must grant or deny the Petition within 30 days after it was filed, either stating the reason for denial in writing or directing staff to prepare an order instituting rulemaking. (CCR, title 20, §1221(c).)

III. Petitioner's Requests and Assertions

The Petition states “formal rulemaking is necessary to ensure clarity, consistency, and accuracy for both CEC staff and all regulated entities in interpreting, implementing, and properly complying with SB X1-2 and SB 1322.” Petitioner asserts that, unless the CEC conducts a formal rulemaking, “SB X1-2 and SB 1322 will likely result in inconsistent and uneven interpretation and application by the regulated community.” Appendix A of the Petition contains a list of items Petitioner believes require additional clarity. Petitioner requests the CEC issue an order initiating a formal rulemaking regarding implementation of SB X1-2 and SB 1322, and that the CEC hold workshops and order a phased-in compliance period.

IV. CEC Staff Recommendation

SB X1-2 has yet to take effect. Accordingly, it is not clear that any terms or processes related to implementation of Chapters 4.5 and 4.6 of Division 15 of the PRC, as modified by SB X1-2, require clarification. With respect to the data reporting requirements of SB X1-2 and SB 1322, the legislation is clear as written and CEC staff sees no impediment for regulated entities to comply with the requirements by the specified deadlines. The CEC should instead consider whether to open a rulemaking on this topic and the scope of such a rulemaking, if any, following implementation. At that time, the CEC can gather feedback based on more concrete information to determine whether a rulemaking is necessary.

With respect to the maximum gross gasoline refining margin (MGGRM), the CEC will implement a robust and transparent public process to determine whether the CEC should set a MGGRM. The processes and procedures that the CEC will consider with respect to the MGGRM are exempt from the rulemaking provisions of the Administrative Procedure Act (APA) pursuant to PRC section 25355.5(o) and subject to the steps to elicit stakeholder input on the proposals outlined in PRC section 25355.5(f). The CEC is also establishing a robust and transparent public process to determine whether the CEC already has or should impose additional measures to protect the confidentiality of the data and to ensure that all measures are in place to protect the data from cyber security concerns. There is no evidence to suggest the CEC does not have systems in place to secure such data, and the law is clear with respect to how confidential information is to be shared and protected.

For these reasons, CEC staff believes it is unnecessary at this time to grant the Petition and staff encourages the CEC to open a rulemaking process regarding implementation of SB X1-2 and SB 1322 once those provisions take effect and the CEC has gained experience with implementation to inform the need for regulations to interpret or make specific these statutes. The CEC has multiple independent sources of authority to adopt regulations implementing the provisions of SB X1-2 and SB 1322. The CEC may adopt APA-exempt regulations, guidelines, or other standards concerning each refiner's notice or report of plan maintenance, unplanned maintenance, and turnaround schedule pursuant to subdivision (m) of PRC section 25354 at a CEC business meeting. (Pub. Res. Code § 25354(n)(2).) The CEC may also adopt APA-exempt regulations to establish or adjust an MGGRM, under section 25355.5. (Pub. Res. Code § 25355.5(o).) For the remaining sections of Chapter 4.5 of Division 15 of the PRC, the CEC may adopt regulations or orders to implement provisions therein, and such regulations or orders shall be considered by the Office of Administrative Law to be an emergency. (Pub. Res. Code § 25367(a).) Finally, the CEC has authority to adopt rules and regulations as necessary to carry out the provisions of Division 15 of the PRC. (Pub. Res. Code §§ 25213, 25218(e).)